

AMENDED IN SENATE MARCH 24, 2014

SENATE BILL

No. 962

Introduced by Senator Leno
(Coauthors: Senators Hancock, Pavley, and Wolk)
(Principal coauthor: Assembly Member Skinner)

February 6, 2014

An act to add Section 22761 to the Business and Professions Code, relating to mobile communications devices.

LEGISLATIVE COUNSEL'S DIGEST

SB 962, as amended, Leno. Advanced mobile communications devices.

Existing law regulates various business activities and practices, including the sale of telephones.

This bill would require that any advanced mobile communications device, as defined, that is sold in California on or after January 1, 2015, include a technological solution, which may consist of software, hardware, or both software and hardware, that can render inoperable the essential features of the device, as defined, when the device is not in the possession of the rightful owner. The bill would require that the technological solution be able to withstand a hard reset, as defined, *and when enabled, prevent reactivation of the device on a wireless network except by the rightful owner or his or her authorized designee. The bill would make these requirements inapplicable to the sale of an advanced mobile communications device in California when (1) the device was manufactured prior to January 1, 2015, or was originally sold outside of California, and (2) the device is resold in California on the secondary market or is consigned and held as collateral on a loan.* The bill would prohibit the sale of an advanced mobile communications device in

California without the technological solution being enabled, but would authorize the rightful owner to affirmatively elect to disable the technological solution after sale. The bill would prohibit a provider of commercial mobile radio service, as defined, from including any term or condition in a *sales or* service contract with an end-use consumer with an address within the state that requires or encourages the consumer or rightful owner to disable the technological solution that renders the consumer's smartphone or other advanced communications device useless if stolen. The bill would make a violation of the bill's requirements subject to a civil penalty of not less than \$500, nor more than \$2,500, for each violation.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) According to the Federal Communications Commission,
- 4 ~~one in three robberies in the United States involve the theft of a~~
- 5 ~~mobile communications device, making it the number one property~~
- 6 ~~crime in the country~~ *smartphone thefts now account for 30 to 40*
- 7 *percent of robberies in many major cities across the country.* Many
- 8 of these robberies often turn violent with some resulting in the loss
- 9 of life.
- 10 (b) Consumer Reports projects that 1.6 million Americans were
- 11 victimized for their smartphones in 2012.
- 12 (c) According to the New York Times, 113 smartphones are
- 13 lost or stolen every minute in the United States.
- 14 (d) According to the Office of the District Attorney for the City
- 15 and County of San Francisco, in 2012, more than 50 percent of all
- 16 robberies in San Francisco involved the theft of a mobile
- 17 communications device.
- 18 (e) Thefts of smartphones in Los Angeles increased 12 percent
- 19 in 2012, according to the Los Angeles Police Department.
- 20 (f) According to press reports, the international trafficking of
- 21 stolen smartphones by organized criminal organizations has grown
- 22 exponentially in recent years because of how profitable the trade
- 23 has become.

(g) Replacement of lost and stolen mobile communications devices was an estimated thirty-billion-dollar (\$30,000,000,000) business in 2012 according to studies conducted by mobile communications security experts. Additionally, industry publications indicate that the four largest providers of commercial mobile radio services made an estimated seven billion eight hundred million dollars (\$7,800,000,000) from theft and loss insurance products in 2013.

(h) Technological solutions that render stolen mobile communications devices useless already exist, but the industry has been slow to adopt them.

(i) In order to be effective, these technological solutions need to be ubiquitous, as thieves cannot distinguish between those mobile communications devices that have the solutions enabled and those that do not. As a result, the technological solution should be able to withstand a hard reset or operating system downgrade, and be enabled by default, with consumers being given the option to affirmatively elect to disable this protection.

(j) Manufacturers of advanced mobile communications devices and commercial mobile radio service providers have a responsibility to ensure their customers are not targeted as a result of purchasing their products and services.

(k) It is the intent of the Legislature to require all smartphones and other advanced mobile communications devices offered for sale in California to come with a technological solution enabled, in order to deter theft and protect consumers.

(l) It is the further intent of the Legislature to prohibit any term or condition in a service contract between a customer and a commercial mobile radio service provider that requires or encourages the customer to disable the technological solution that renders the customer's smartphone or other advanced communications device useless if stolen.

SEC. 2. Section 22761 is added to the Business and Professions Code, to read:

22761. (a) For purposes of this section, the following terms have the following meanings:

(1) "Advanced mobile communications device" means an electronic device that is regularly hand held when operated that enables the user to engage in voice communications using mobile telephony service, Voice over Internet Protocol, or Internet Protocol

1 enabled service, as those terms are defined in Sections 224.4 and
2 239 of the Public Utilities Code, and to connect to the Internet,
3 and includes what are commonly known as smartphones and
4 tablets.

5 (2) “Commercial mobile radio service” means “commercial
6 mobile service,” as defined in subsection (d) of Section 332 of
7 Title 47 of the United States Code and as further specified by the
8 Federal Communications Commission in Parts 20, 22, 24, and 25
9 of Title 47 of the Code of Federal Regulations, and includes
10 “mobile satellite telephone service” and “mobile telephony
11 service,” as those terms are defined in Section 224.4 of the Public
12 Utilities Code.

13 (3) “Essential features” of an advanced mobile communications
14 device include the ability to use the device for voice
15 communications and the ability to connect to the Internet, including
16 the ability to access and use mobile software applications
17 commonly known as “apps.”

18 (4) “Hard reset” means the restoration of an advanced mobile
19 communications device to the state it was in when it left the
20 factory, and refers to any act of returning a device to that state,
21 including processes commonly termed a factory reset or master
22 reset.

23 (5) “Sold in California” means that the advanced mobile
24 communications device is sold at retail, and not for resale, from a
25 location within the state, or the advanced mobile communications
26 device is sold and shipped to an end-use consumer at an address
27 within the state.

28 (b) (1) Any advanced mobile communications device that is
29 sold in California on or after January 1, 2015, shall include a
30 technological solution that can render the essential features of the
31 device inoperable when the device is not in the possession of the
32 rightful owner. *The technological solution shall be reversible, so*
33 *that if the rightful owner obtains possession of the device after the*
34 *essential features of the device have been rendered inoperable,*
35 *the operation of those essential features can be restored by the*
36 *rightful owner or his or her authorized designee.* A technological
37 solution may consist of software, hardware, or a combination of
38 both software and hardware, but shall be able to withstand a hard
39 reset, *and when enabled, shall prevent reactivation of the device*
40 *on a wireless network except by the rightful owner or his or her*

1 *authorized designee*. No advanced mobile communications device
2 may be sold in California without the technological solution
3 enabled. *The essential features that are required to be rendered*
4 *inoperable pursuant to this paragraph do not include the ability*
5 *of the device to access emergency services by dialing the numerals*
6 *“911.”*

7 (2) *The requirements of paragraph (1) do not apply to the sale*
8 *of an advanced mobile communications device in California if*
9 *both of the following are true:*

10 (A) *The device was manufactured prior to January 1, 2015, or*
11 *was originally sold outside of California.*

12 (B) *The device is resold in California on the secondary market*
13 *or is consigned and held as collateral on a loan.*

14 ~~(2)~~

15 (3) The rightful owner of an advanced mobile communications
16 device may affirmatively elect to disable the technological solution
17 after sale. However, the physical acts necessary to disable the
18 technological solution may only be performed by the end-use
19 consumer or a person specifically selected by the end-use consumer
20 to disable the technological solution and shall not be physically
21 performed by any retail seller of the advanced mobile
22 communications device.

23 (c) A provider of commercial mobile radio service shall not
24 include a *charge, discount, incentive, or other* term or condition
25 in a *sales or* service contract with an end-use consumer with an
26 address within the state that requires or encourages the consumer
27 or rightful owner to disable the technological solution that renders
28 the consumer’s smartphone or other advanced communications
29 device useless if stolen.

30 (d) (1) A person or retail entity selling an advanced
31 communications device in California in violation of subdivision
32 (b) shall be subject to a civil penalty of not less than five hundred
33 dollars (\$500), nor more than two thousand five hundred dollars
34 (\$2,500), per device sold in California.

35 (2) A provider of commercial mobile radio service that includes
36 a term or condition in a service contract with an end-use consumer
37 with an address within the state in violation of subdivision (c) shall
38 be subject to a civil penalty of not less than five hundred dollars
39 (\$500), nor more than two thousand five hundred dollars (\$2,500),

- 1 per service contract with an end-use consumer with an address
- 2 within California.

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